

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929**

**OP.No. 29506 of 2000(Y)**  
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**PETITIONER:**  
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**THE ERNAD PRIMARY CO-OPERATIVE AGRL. &  
RURAL DEVELOPMENT BANK LTD. NO. 4363,  
KARUVAMBRAM P.O., MANJERI- 676 123,  
MALAPPURAM DIST.  
REP. BY ITS SECRETARY, I. JOHN GEORGE.**

**BY ADV. SRI.P.N.RAVINDRAN**

**RESPONDENTS:**  
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- 1. THE STATE OF KERALA,  
REP. BY THE SECRETARY TO GOVT.,  
REGISTRATION DEPARTMENT,  
SECRETARIAT, THIRUVAANANTHAPURAM.**
- 2. THE INSPECTOR GENERAL OF REGISTRATION, KERALA.  
THIRUVAANANTHAPURAM.**
- 3. THE DIST. REGISTRAR, MALAPPURAM.**
- 4. THE SUB REGISTRAR (AMALGAMATED),  
OFFICE OF THE SUB REGISTRAR, MALAPPURAM.**
- 5. THE SUB REGISTRAR, NILAMBUR.**
- 6. THE JOINT REGISTRAR OF CO-OPERATIVE  
SOCIETIES (GENERAL), MALAPPURAM.**

**BY GOVERNMENT PLEADER SMT. SMITHA SUKUMAR**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD  
ON 31/10/2007, THE COURT ON 01/11/2007 DELIVERED THE  
FOLLOWING:**

ORDER ON CMP NO. 49966/2000 IN OP NO. 29506/2000 K.

DISMISSED

01/11/2007.

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE GO MS NO. 795/60/AGR. DT. 8/10/60 BY THE R1.

EXT.P2. COPY OF THE CERTIFICATE DT. 21/07/89 BY THE SLAE OFFICER OF THE PETITIONER BANK AND REGISTERED BY THE SUB REGISTRAR , EDAKKARA.

EXT.P3. COPY OF THE SALE CERTIFICATE DT. 23/10/95 BY THE SALE OFFICER OF THE PETITIONER BANK AND REGISTERED BY THE SUB REGISTRAR, MALAPPURAM.

EXT.P4. COPY OF THE LETTER DT. 8/9/00 FROM THE SALE OFFICER OF THE PETITIONER BANK ADDRESSED TO THE R5.

EXT.P5. COPY OF THE CERTIFICATE DT. 21/6/00 BY THE SALE OFFICER OF THE PETITIONER BANK AND IMPOUNDED BY THE SUB REGISTRAR, NILAMBUR.

EXT.P6. COPY OF THE REPRESENTATION DT. 12/10/00 BY THE PETITIONER TO THE R3.

EXT.P7. COPY OF THE REPRESENTATION DT. 16/10/00 BY THE PETITIONER TO THE R4.

EXT.P8. COPY OF THE SALE CERTIFICATE DT. 21/6/00 BY THE SALE OFFICER OF THE PETITIONER BANK AND IMPOUNDED BY THE SUB REGISTRAR (AMALGAMATED), MALAPPURAM.

EXT.P9. COPY OF THE ORDER DT. 1777.1/05 DT. 24/10/05 BY THE DIST. REGISTRAR, KASARAGOD.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE GOVT.LETTER NO. 4082/E3/96/TD DT. 24/4/97 OF TAXES (E) DEPARTMENT.

*True copy*

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**THOTTATHIL B. RADHAKRISHNAN, J.**

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**O.P.No.29506 of 2000-K**

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Dated this the 1<sup>st</sup> day of November, 2007.

**JUDGMENT**

“CR”

1. The petitioner is a co-operative society registered under the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the “KCS Act”. It was formed by bifurcating a co-operative land mortgage bank which was registered under the Madras Co-operative Societies Act, 1932, for short, the “Madras Act”. Thereafter, the Kerala State Co-operative (Agricultural and Rural Development Banks) Act, 1984 came into force. That Act, for short, “the CARD Act”, governs the loan transactions of the petitioner.

2. On the basis of the provisions of the CARD Act, the petitioner is entitled to seek sale of charged property, without intervention of court. In certain situations, the Bank, with permission, bids in auction. Sales certificates have been issued by the Sale Officer in favour of the petitioner. The issue raised in this writ petition is as to whether those sale certificates are exempted from levy of stamp duty under the provisions of Kerala Stamp Act, 1959, hereinafter referred to as the "Stamp Act".

3. Ext.P1 is a notification issued by the Government of Kerala on 8-10-1960 as SRO.No.75/1960, in exercise of powers under the then prevailing Travancore-Cochin Co-operative Societies Act, 1951 and the Madras Act. The said notification, by virtue of the provisions of the KCS Act, continues to govern the field, as of now. The issue arising for decision is as to whether the transaction noticed above, is one that would fall within Clause 1(a) of

Ext.P1 notification. That provision reads as follows:

“1.The stamp duty, registration fees and fees for encumbrance certificates payable under the Stamp Act and the Registration Act, in force in the State shall be remitted to the Co-operative Societies, in the following cases to the extent indicated in each case:

(a) The whole stamp duty with which under the Kerala Stamp Act 1959 (Act 17 of 1959) instruments executed by or on behalf of any registered Co-operative Society or instruments executed by “any officer of such society or member in his own capacity or/and in the capacity of a Guardian of minor” and relating to the business thereof and decisions, award or orders of the Registrar or the Arbitrators under the said Co-operative Societies Act.”

4.The petitioner has two-fold arguments. Firstly, it is contended that it is a co-operative society and therefore, the benefit of Clause 1(a) of Ext.P1 applies. It is secondly

contended that the sale certificates issued under Section 23 of the CARD Act are not chargeable with stamp duty in view of Ext.P1 notification. Incidentally, it is also pointed out that some of the exhibits evidence that certain documents which are sale certificates issued under the CARD Act in favour of the petitioner were held to be not chargeable, as per the decisions endorsed by the District Registrars under Section 39(a) of the Stamp Act.

5. In O.P.No.3052/2003 rendered on a plea of a co-operative society that sale certificates are not liable to stamp duty, this Court held, as per judgment dated 30<sup>th</sup> September, 2003 that a sale by arbitrator is not by a member of a society but is an action taken under Rule 83(5) of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as "the KCS Rules" and therefore, such transactions do not fall within the purview of Clause 1(a) of Ext.P1 notification. That has been affirmed by the Division Bench in W.A.No.1280/2004. Over and above the

binding nature of those judgments, I am in complete agreement with the ratio enunciated therein.

6. However, in the case in hand, the sale certificates are not issued under the provisions of the KCS Act, but are issued under the provisions of CARD Act.

7. Section 19 of the CARD Act provides that the bank shall have power to bring to sale the property to which the Gehan or mortgage or hypothecation relates, without intervention of the court, notwithstanding anything contained in the KCS Act, Transfer of Property Act or any other law for the time being in force. This power is in addition to any other remedy available to a primary bank. For exercising the aforesaid power of sale conferred by sub-section (1) of Section 19 of the CARD Act, the Board or the Committee or any person duly authorised by the Board or committee of the bank has to apply to the sale officer appointed in that behalf under Section 28. This

provision in Section 20 of the CARD Act is followed by different provisions as to distribution of sale proceeds, issue of certificate to purchaser, application to set aside sale etc. Section 28 of the CARD Act provides that the Registrar may appoint sale officers for the purpose of conducting sales under that Act. Registrar, going by Section 2(i) of the CARD Act means the Registrar of Co-operative Societies appointed under sub-section (l) of Section 3 of the KCS Act. Thus, it can be seen that the Registrar of Co-operative Societies appointed under the KCS Act, by virtue of such appointment and the force of Section 2(i) of the CARD Act, is the Registrar for the purpose of the CARD Act and he appoints a sale officer under Section 28 of that Act.

8. In terms of Chapter V of the CARD Act, the sale officer has to grant a certificate to the purchaser and also decide on applications to set aside sale on deposit and also take action for delivery of property to purchaser. The

provisions of Rules 97 to 103 of the Order XXI of the First Schedule to the Code of Civil Procedure also applies *mutatis mutandis* to cases dealt with by the sale officer under sub-sections (1) and (2) of Section 24 relating to delivery of property to purchaser. The provisions of Chapter V, thus, overwhelmingly stand to demonstrate that the sale certificate is not an officer of the society. The scheme of Chapter V of the CARD Act, which relates to sale of property without intervention of Court, would show that the sale officer appointed by the Registrar under Section 28 is essentially a person independent of the Board or committee of the bank and is a person who is not one who is an officer of the society. Going by the sale certificates in question, they are issued by a government servant, to wit, the Senior Co-operative Inspector appointed as the Special Sale Officer.

9. Focusing special attention to the second limb of Clause 1

(a) of Ext.P1 notification, it can be seen that when

exemption from stamp duty is claimed on the basis of awards or orders of the Registrar or Arbitrators, such decisions which fall under that clause of Ext.P1 notification, are only those which are issued under the provisions of the "Co-operative Societies Act", thereby meaning the Travancore-Cochin Co-operative Societies Act, 1951 and/or the Madras Act which Acts prevailed at the time of issuance of Ext.P1 notification and under which statutes, Ext.P1 notification was issued, as also the successor statute, namely, the KCS Act which, among other things, by Section 110, repealed the aforesaid two predecessor statutes. The continued survival of Ext.P1 is on the basis of sub-section (2) of Section 110 of the KCS Act and is, therefore, deemed and issued under the KCS Act. Therefore, the awards or orders of the Registrar or Arbitrators referred to in Clause 1(a) of Ext.P1 can relate only to such awards or orders as issued by the Registrar or Arbitrators under the KCS Act and not under the CARD Act.

10.The incidental question that exemptions were granted in relation to some of the sale certificates does not, by itself, impress because, the legal position being as noticed above, an erroneous action is not a precedent to be followed.

11.For the aforesaid reasons, it is held that the benefit of Clause 1(a) of Ext.P1 notification does not inure to sale certificates issued under the CARD Act.

12.In the result, the writ petition fails. The same is accordingly dismissed. No costs.

**THOTTATHIL B. RADHAKRISHNAN,  
JUDGE.**

Sha/-

OP29506/2000

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**THOTTATHIL B. RADHAKRISHNAN, J.**

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**O.P.No.29506 of 2000-K**

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**JUDGMENT**

**Dated: 1<sup>st</sup> November, 2007.**